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The situation in the Middle East

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Sixty-ninth year

Letter dated 19 May 2014 from the Permanent Representative of Switzerland to the United Nations addressed to the Secretary-General

Please find enclosed a copy of a letter I sent today to all United Nations Member States and Observers together with the Governments of Albania, Andorra, Australia, Austria, Belgium, Botswana, Bulgaria, Cape Verde, Chile, the Cook Islands, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Ghana, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Libya, Liechtenstein, Lithuania, Luxembourg, Maldives, Malta, the Marshall Islands, Monaco, Montenegro, the Netherlands, New Zealand, Norway, Panama, Paraguay, Poland, Portugal, the Republic of Korea, the Republic of Moldova, Romania, San Marino, Samoa, Seychelles, Slovakia, Slovenia, Spain, the Former Yugoslav Republic of Macedonia, Tunisia, the United Kingdom of Great Britain and Northern Ireland and Uruguay* (see annex I).

The said letter calls upon all United Nations Member States to co-sponsor the French draft Security Council resolution referring the situation in the Syrian Arab Republic since March 2011 to the International Criminal Court.

Since we believe that this letter is of interest to all States Members of the United Nations, we would like to request its circulation as a document of the General Assembly, under agenda item 35, and of the Security Council, in connection with the item "The situation in the Middle East".

(*Signed*) Paul **Seger**
Ambassador
Permanent Representative

* Clarification on the part of Switzerland, on the basis of clarification received from the Mission of Uruguay: While Uruguay strongly supports a referral, it will be unable to co-sponsor the draft resolution and therefore prefers not to associate itself with the call for co-sponsorship.

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Annexes to the letter dated 19 May 2014 from the Permanent Representative of Switzerland to the United Nations addressed to the Secretary-General

Annex I

To all United Nations Member States and Observers: Call for co-sponsorship of the French draft Security Council resolution (attached) referring the situation in the Syrian Arab Republic to the International Criminal Court

I am writing to you on behalf of the following 58 States: Albania, Andorra, Australia, Austria, Belgium, Botswana, Bulgaria, Cape Verde, Chile, Cook Islands, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Ghana, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Libya, Liechtenstein, Lithuania, Luxembourg, Maldives, Malta, Marshall Islands, Monaco, Montenegro, Netherlands, New Zealand, Norway, Panama, Paraguay, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, San Marino, Samoa, Seychelles, Slovakia, Slovenia, Spain, the Former Yugoslav Republic of Macedonia, Tunisia, United Kingdom of Great Britain and Northern Ireland, Uruguay,* and my own country, Switzerland.

You may recall that, on 14 January 2013, the same group of 58 States sent a letter to the President of the Security Council (S/2013/19) expressing our firm view that the Council must ensure accountability for the crimes committed in the Syrian Arab Republic. We asked that the Security Council act "by referring the situation in the Syrian Arab Republic as of March 2011 to the International Criminal Court without exceptions and irrespective of the alleged perpetrators".

Since then, the conflict has only grown in intensity and scope. More than 150,000 are estimated to have died, many of them civilians. Over 2.7 million have fled the country as refugees, and more than 6.5 million are internally displaced. Abuses and violations of international humanitarian law and human rights law continue on a daily basis and in a pervasive climate of impunity; many have been documented. The United Nations High Commissioner for Human Rights, Navi Pillay, has repeatedly called for a referral, and so has the Independent Commission of Inquiry mandated by the Human Rights Council.

Over one year after the collective call of the 58 States and on the basis of an initiative by France, Council members will this Thursday take action on a draft resolution (see annex II) that would refer the situation in the Syrian Arab Republic to the International Criminal Court. France has indicated that it will open the resolution for co-sponsorship to the wider United Nations membership. To co-sponsor the resolution, delegations need to submit a rule 37 request to the Security Council Affairs Division. A copy of the signed letter (sample attached; see annex III) can be sent to dpa-scb3@un.org or faxed to 1-917-367-0406.

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* Clarification on the part of Switzerland, on the basis of clarification received from the Mission of Uruguay: While Uruguay strongly supports a referral, it will be unable to co-sponsor the draft resolution and therefore prefers not to associate itself with the call for co-sponsorship.

While several members of the group would prefer a stronger language regarding the terms of the referral and the support of the Organization, we all share the view that the initiative by France represents the best opportunity to bring at last, three years into the Syrian civil war, the promise of accountability to its war-ravaged people and at the same time to help to deter further atrocities. Each side of the conflict would be held accountable. According to the draft resolution, the Prosecutor of the International Criminal Court would be empowered to investigate crimes committed by the Syrian authorities and pro-government militias, as well as by non-State armed groups, all committed in the course of the ongoing conflict in the Syrian Arab Republic since March 2011.

Against this background, the 58 States strongly support the French initiative. We call upon the Security Council to adopt the draft resolution and we encourage United Nations Member States, States parties to the Rome Statute or not, to send a strong message of political support by co-sponsoring the resolution. The United Nations — the Security Council and the wider membership alike — should be united in acting for justice and accountability for the victims of the conflict in Syria.

I thank you in advance for your attention and your expression of support.

(*Signed*) Paul **Seger**
Ambassador
Permanent Representative

Annex II

France and Lithuania: draft resolution

The Security Council,

Recalling its resolutions 2042 (2012), 2043 (2012), 2118 (2013) and 2139 (2014), and its Presidential Statements of 3 August 2011, 21 March 2012, 5 April 2012 and 2 October 2013,

Reaffirming its strong commitment to the sovereignty, independence, unity and territorial integrity of the Syrian Arab Republic, and to the purposes and principles of the Charter of the United Nations,

Recalling its full endorsement of the Geneva Communiqué of 30 June 2012 which states that accountability for acts committed during the present conflict in the Syrian Arab Republic must be addressed,

Taking note of the reports of the independent international commission of inquiry on the Syrian Arab Republic, mandated by the Human Rights Council to investigate all alleged violations of international human rights law since March 2011 in the Syrian Arab Republic, to establish the facts and circumstances that may amount to such violations and of the crimes perpetrated and, where possible, to identify those responsible with a view to ensuring that perpetrators of violations, including those that may constitute crimes against humanity, are held accountable,

Recalling the statements made by the Secretary-General and the United Nations High Commissioner for Human Rights that crimes against humanity and war crimes are likely to have been committed in the Syrian Arab Republic,

Noting the repeated encouragement by the United Nations High Commissioner for Human Rights for the Security Council to refer the situation to the International Criminal Court,

Determining that the situation in the Syrian Arab Republic constitutes a threat to international peace and security,

Acting under Chapter VII of the Charter of the United Nations,

1. *Reaffirms* its strong condemnation of the widespread violations of human rights and international humanitarian law by the Syrian authorities and pro-government militias, as well as the human rights abuses and violations of international humanitarian law by non-State armed groups, all committed in the course of the ongoing conflict in the Syrian Arab Republic since March 2011;

2. *Decides* to refer the situation in the Syrian Arab Republic described in paragraph 1 above since March 2011 to the Prosecutor of the International Criminal Court;

3. *Decides also* that the Government of the Syrian Arab Republic shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor, including by implementing fully the Agreement on the Privileges and Immunities of the International Criminal Court, pursuant to this resolution and, while recognizing that States not party to the Rome Statute have no obligation under the Statute, strongly urges all States and concerned regional and other international organizations to cooperate fully with the Court and the Prosecutor;

4. *Demands* that non-State armed groups in the Syrian Arab Republic also cooperate fully with and provide any necessary assistance to the Court and the Prosecutor in connection with investigations and prosecutions undertaken pursuant to this resolution;

5. *Expresses its commitment* to an effective follow-up of the present resolution;

6. *Recalls* the guidance issued by the Secretary-General on contacts with persons who are the subject of arrest warrants or summonses issued by the International Criminal Court;

7. *Decides* that nationals, current or former officials or personnel from a State outside the Syrian Arab Republic which is not a party to the Rome Statute of the International Criminal Court shall be subject to the exclusive jurisdiction of that State for all alleged acts or omissions arising out of or related to operations in the Syrian Arab Republic established or authorized by the Council, unless such exclusive jurisdiction has been expressly waived by the State;

8. *Recognizes* that none of the expenses incurred in connection with the referral, including expenses related to investigations or prosecutions in connection with that referral, shall be borne by the United Nations and that such costs shall be borne by the parties to the Rome Statute and those States that wish to contribute voluntarily and *encourages* States to make such contributions, noting the need for funding of expenses related to investigations or prosecutions of the International Criminal Court, including in connection with situations referred to the Court by the Security Council, as stated in General Assembly resolution 67/295;

9. *Invites* the Prosecutor to address the Council within two months of the date of adoption of this resolution and every six months thereafter on actions taken pursuant to this resolution and requests the Secretary-General to circulate the report of the Prosecutor as a document of the Council, in advance of such briefings;

10. *Decides* to remain seized of the matter.

Annex III

___ May 2014

Excellency,

Upon instructions from my Government, I have the honour to request that my delegation be allowed to participate without the right to vote, in accordance with the relevant provisions of the Charter of the United Nations and rule 37 of the provisional rules of procedure of the Security Council, in the Council's meeting on ___ May 2014, in connection with the agenda item "The situation in the Middle East", in order to co-sponsor the draft resolution to be voted upon at that meeting.

Please accept, Excellency, the assurances of my highest consideration.

Sign _____

Print name _____

Permanent Mission of _____
to the United Nations

His Excellency
Mr. Oh Joon
President of the Security Council
United Nations
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